

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,  
vs.

ERIC TABARO NSHIMIYE,

Defendant.

Case No. 4:24MJ6106  
Youngstown, Ohio  
Friday, March 29, 2024  
3:13 p.m.

TRANSCRIPT OF INITIAL APPEARANCE AND DETENTION HEARING  
BEFORE THE HONORABLE CARMEN E. HENDERSON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: David M. Toepfer  
Office of the U.S. Attorney-Youngstown  
325 City Center One  
100 East Federal Plaza  
Youngstown, Ohio 44503  
(330) 740-6986

For the Defendant: David E. Johnson  
Office of the Federal Public Defender  
Skylight Office Tower, Suite 750  
1660 West Second Street  
Cleveland, Ohio 44113  
(216) 522-4856

Court Reporter: Caroline Mahnke, RMR, CRR, CRC  
Federal Building & U.S. Courthouse  
2 South Main Street, Suite 568  
Akron, Ohio 44308  
(330) 252-6021

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1 All right. Mr. Nshimiye, we are here today for your  
2 detention hearing. However, since we have last -- since you  
3 were last in front of me, it's come to my attention that you  
4 were indicted on some charges in the District of  
5 Massachusetts. So you're also here today for an initial  
6 appearance, an initial appearance on those charges.

7 The purpose of that portion of the hearing is to make  
8 you aware of the charges in the indictment that you have  
9 been charged with, to also go over your constitutional  
10 rights regarding that.

11 Once we do all of that today, we will then move on to  
12 the other hearings that we have talked about regarding your  
13 right to an identity hearing and then the right to a  
14 detention hearing.

15 Regarding the preliminary hearing, that issue has now  
16 become moot because since there is an indictment that has  
17 been returned, that means that there is a finding of  
18 probable cause. And so therefore that preliminary hearing  
19 is moot.

20 But we will move forward with talking about those  
21 other hearings.

22 I'm going to start by having the assistant United  
23 States attorney go over the charges in that indictment.

24 Mr. Toepfer.

25 MR. TOEPFER: Your Honor, this indictment was

1 issued by a grand jury sitting in United States District  
2 Court for the District of Massachusetts, Case Number  
3 1:24CR10071.

4 The counts before the Court are perjury, violation of  
5 Title 18, United States Code, Section 1623(a); Count 5,  
6 obstruction of justice, aiding and abetting, violation of  
7 Title 18, United States Code, Sections 1503 and 2; Count 6  
8 is falsifying, concealing, and covering up a material fact,  
9 in violation of Title 18, United States Code, Section  
10 1001(a) (1) .

11 THE COURT: Thank you.

12 Mr. Nshimiye, do you have a copy of the indictment?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And have you had the opportunity to  
15 review it with your attorney?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Thank you.

18 I'm going to start by advising you of your right to  
19 counsel. You have a constitutional right to be represented  
20 by an attorney at every stage of these proceedings. You  
21 have the right to retain the counsel of your choosing.  
22 However, if you cannot afford counsel, the Court will  
23 appoint counsel to represent you.

24 Do you understand your right to counsel?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. And the Court has  
2 previously appointed the Office of the Federal Public  
3 Defender to represent you. And specifically Mr. Johnson  
4 from that office is here to represent you today.

5 Do you understand that he's here to represent you  
6 today?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Thank you.

9 Additionally, you have the right to remain silent.  
10 You are not required to make a statement. Anything you say  
11 can be used against you. If you start to make a statement,  
12 you may stop at any time. You may also speak with your  
13 attorney at any time.

14 Do you understand your right to remain silent?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Thank you.

17 All right. Mr. Nshimiye, because the indictment that  
18 was returned against you was returned in a district other  
19 than this one, because it was returned in the District of  
20 Massachusetts, you also have other rights.

21 One of those -- some of those rights are rights that  
22 we previously talked about.

23 You have the right to waive removal and to voluntarily  
24 return to the District of Massachusetts where the charges  
25 against you are pending.

1           You also have the right to an identity hearing to  
2           determine whether or not you are the person named in the  
3           indictment that brought about your arrest.

4           I have in front of me a form -- or you have the right  
5           to waive the identity hearing.

6           I have in front of me a form titled Waiver of Rule 5  
7           and 5.1 Hearings. And it purports -- and it says, "I agree  
8           to waive my right to an identity hearing and production of  
9           the warrant."

10          It purports to be signed by you and signed by your  
11          attorney, and it has today's date.

12          Did you have the opportunity to go over this with your  
13          attorney prior to signing it?

14                 THE DEFENDANT: Yes, Your Honor.

15                 THE COURT: All right. And do you understand  
16          that by signing this agreement and waiver you're giving up  
17          your right to an identity hearing in this district and  
18          you're agreeing to be transferred to the District of  
19          Massachusetts?

20                 THE DEFENDANT: Yes.

21                 THE COURT: Do you also understand that by  
22          signing this you are admitting that you are the person named  
23          in the indictment?

24                 THE DEFENDANT: Yes, Your Honor.

25                 THE COURT: All right. Thank you.

1           And I accept the waiver of removal and the agreement  
2           to voluntarily transfer back to the District of  
3           Massachusetts and the waiver of the identity hearing.

4           Can you please state your full name and your age for  
5           the record?

6           THE DEFENDANT: My name is Eric Nshimiye, and I  
7           was born in 19 -- oh, so 53 years old.

8           THE COURT: All right. Thank you.

9           All right. So now that we are done with that portion  
10          of the proceeding, you have already indicated to the Court  
11          that you would like to have a detention hearing. You also  
12          have a right to a detention hearing, so we will proceed with  
13          the detention hearing at this time.

14          Detention hearing is pursuant to Title 18, United  
15          States Code, Section 3142. This is on the government's  
16          motion for detention.

17          The issue before the Court is whether there are  
18          conditions that will reasonably assure the safety of other  
19          persons and the community as well as your appearance.

20          We've already gone over the indictment and the  
21          charges. My understanding, based on the charges in the  
22          indictment, is that there is not a presumption of detention.

23          Is that correct, Mr. Toepfer?

24          MR. TOEPFER: Yes.

25          THE COURT: Do you also agree with that, Mr.

1 Johnson?

2 MR. JOHNSON: I do, Your Honor.

3 THE COURT: Okay. Thank you.

4 All right. And have both parties had an adequate  
5 opportunity to prepare for the hearing?

6 Mr. Toepfer.

7 MR. TOEPFER: Yes, Your Honor.

8 THE COURT: Mr. Johnson.

9 MR. JOHNSON: Yes, Your Honor.

10 THE COURT: And have both parties received the  
11 pretrial services report?

12 Mr. Toepfer.

13 MR. TOEPFER: Yes.

14 MR. JOHNSON: Yes.

15 THE COURT: All right. Thank you.

16 All right. The way we'll proceed is we will proceed  
17 with the detention hearing. The evidence here will be  
18 limited to the issue of detention.

19 We will proceed by first having the government present  
20 any evidence it has on the issue of detention. I will then  
21 switch over to Mr. Johnson to put any evidence he has on  
22 your behalf regarding the issue of detention. I will then  
23 hear argument from both parties before making my decision.

24 Regarding putting on evidence, both parties may  
25 proceed in whole or in part by proffering in evidence to the



1 record, or parties can call witnesses if they choose to do  
2 so.

3 If the government does call witnesses, then you would  
4 have an opportunity to cross-examine those witnesses and  
5 vice versa if you were to call witnesses.

6 With that, is there -- and, oh, sorry. I will also go  
7 over the issue before the Court, again, is whether there are  
8 conditions that will reasonably assure the safety of other  
9 persons and the community or the appearance of the  
10 defendant.

11 The government has the burden today. It must either  
12 prove by clear and convincing evidence that no condition  
13 will reasonably assure the safety of other persons and the  
14 community or by a preponderance of the evidence that no  
15 condition will reasonably assure your appearance.

16 With that, is the government ready to proceed, Mr.  
17 Toepfer?

18 MR. TOEPFER: Yes, Your Honor.

19 THE COURT: All right. You may proceed.

20 MR. TOEPFER: Your Honor, I will not be calling  
21 witnesses today. Instead I would like to proffer the  
22 following items in for the record:

23 First, I would like to proffer for the Court's  
24 consideration the affidavit submitted in support of the  
25 criminal complaint that was originally filed, and I will

1 also proffer the indictment which contains a number of  
2 specific factual allegations that were found by probable  
3 cause by a grand jury in Massachusetts.

4 In addition to that, I can represent to the Court that  
5 according to the Massachusetts assistant U.S. attorney  
6 assigned to the case, if convicted, the defendant would face  
7 removal to Rwanda, face charges related to his involved in  
8 murder, rape, and other activities related to Rwanda  
9 genocide in early the 1990's.

10 In addition, they have represented to me that many of  
11 the witnesses against the defendant have previously  
12 testified in an international court for Rwanda sitting in  
13 Tanzania. They were previously tested by cross-examination,  
14 previously found credible by fact-finding bodies there.

15 Furthermore, the affidavit in this case refers to a  
16 trial of a defendant by the name of Jean Teganya and  
17 testimony the defendant provided at trial suggesting Mr.  
18 Teganya was not involved in the Rwanda genocide and not  
19 involved in various organizations tied to that genocide.

20 Ultimately, a jury found that Mr. Teganya was guilty  
21 of the offenses in that case. Specifically he was found  
22 guilty of two counts of making false statements in  
23 applications required by immigration laws and guilty of  
24 three counts of perjury.

25 That was in Case Number 1:17CR292 in the District

1 Court of Massachusetts on April 5, 2019.

2 And in that case Mr. Teganya faced charges very  
3 similar to those that are filed here against this defendant.

4 Furthermore, according to the assistant U.S. attorney,  
5 during that trial that the defendant testified, he admitted  
6 under oath to providing several false statements to U.S.  
7 authorities while seeking asylum here in the United States.

8 Specifically, he lied to U.S. authorities about where  
9 he was born. He lied about the time and place of his  
10 father's death. And he also lied about where he had gone to  
11 school.

12 Those were relevant because many of the most extreme  
13 Hutus who were the driving force behind the Rwandan genocide  
14 were from the defendant's home of Ruhengeri.

15 Those are all the facts I have to proffer at this  
16 time, so I'll reserve any further comments for the argument  
17 portion.

18 THE COURT: Thank you.

19 Mr. Johnson.

20 MR. JOHNSON: Thank you, Your Honor.

21 As it relates to my factual proffer -- I do not have  
22 any witnesses and I would proceed by proffer.

23 As it relates to my factual proffer, I would first  
24 reference the packet that I e-mailed to your chambers  
25 entitled Notice of Submission of Letters in Support.

1           That submission contained, by my Count, 70,  
2           approximately 70 letters, from Mr. Nshimiye's family,  
3           friends, friends of family, community members, coworkers,  
4           people who have known Mr. Nshimiye a long time and know him  
5           well, as well as information relating to the nonprofit  
6           organization that he founded. That's also contained in that  
7           packet.

8           So I would submit that exhibit in its totality for  
9           this Court's consideration.

10          As it relates to facts, I will start by proffering as  
11          well the pretrial services report and the addendum to the  
12          pretrial services report that was submitted.

13          I will note for the record that Mr. Nshimiye has been  
14          married to his wife since 2001. They have four kids  
15          together, ages 13 to 21.

16          He has been -- a lot of this information is contained  
17          in the pretrial services report, but he was -- he has lived  
18          in the Ohio area since 1995. He resided in the Dayton area  
19          from 1995 through approximately 2000. In 2000, he moved to  
20          the Akron area.

21          He graduated from the University of Dayton in May of  
22          2000. Then, immediately after that, in June of 2000 he  
23          started working at Goodyear where he has been employed ever  
24          since. He is coming up upon his 24-year anniversary at  
25          Goodyear.

1           He started at Goodyear as, for lack of a better term,  
2           an apprentice engineer. He was promoted numerous times, and  
3           he is now serving in the role of a principal engineer.

4           Mr. Nshimiye, as a result of being in custody for the  
5           past week, is currently on leave from that job, but he still  
6           does have that job. He has not been terminated. He is on  
7           leave from Goodyear while he has been in custody.

8           I'll note for the record that Mr. Nshimiye has -- and  
9           I think this goes towards both -- I will proffer the  
10          support, community support that Mr. Nshimiye has.

11          The community support that Mr. Nshimiye has can be  
12          seen from my exhibit that I submitted with the approximately  
13          70 letters.

14          I'll also note the support that he has here in the  
15          courtroom today. We are, for the record, record capacity.  
16          From my understanding, there are people who are not able to  
17          enter the courtroom because we do not have room for them.  
18          As many people that can fit into your courtroom are here to  
19          support Mr. Nshimiye.

20          He is well respected as a member of the Rwanda  
21          American community. He is well respected in the Ohio  
22          community and in the national community. There are people  
23          here present today from all over the nation, including New  
24          York, Texas, there is even an individual from Canada. He is  
25          very well respected throughout the Rwanda American

1 community.

2 I would like to focus a little bit on Mr. Nshimiye's  
3 family. I've been in frequent contact with his nephew, Mr.  
4 Hiba Izanami. He is present. He is seated in the front,  
5 closest to Your Honor.

6 He has been in communication with me quite frequently,  
7 and he is a strong supporter of Mr. Nshimiye and a strong  
8 organizer of the community in support of Mr. Nshimiye. He  
9 is willing to serve as a third-party custodian if necessary.

10 I've also been in communication with Mr. Nshimiye's  
11 wife. She is seated right next to the individual who I just  
12 identified.

13 As I said earlier, they have been married since 2001,  
14 Your Honor. They have four kids.

15 I would like to focus a little bit on their children.

16 Their oldest son was going to Harvard. He decided  
17 to -- to not go to Harvard anymore. Instead, he wanted to  
18 join the religious order, and he is now pursuing that career  
19 path in the religious order in Texas. He is 21 years old.

20 Their next child is a 20-year-old son. He is a  
21 college student at Duke University.

22 Their next child is a daughter. She is 18. She is a  
23 senior in high school. She is a member of the National  
24 Honors Society as well as many other extracurricular  
25 activities. She is anticipating to graduate from high

1 school in the spring summa cum laude. She is anticipating  
2 going to Ohio State and participating in their honors  
3 program.

4 Their youngest child is Destiny. She is 13 years old.  
5 She is a member of the Junior National Honors Society. This  
6 past year she placed second place in the Civics Bee for the  
7 State of Ohio, the entire state competition. She  
8 participates in Speech and Debate. She does plan to go to  
9 law school.

10 Mr. Nshimiye's wife, as we identified earlier, she is  
11 also willing to serve as a third-party custodian if this  
12 Court believes that is necessary.

13 I touched upon earlier the mentorship program and the  
14 charitable organization that Mr. Nshimiye founded. That is  
15 found at the very end of the exhibit that I had submitted.  
16 The website for that organization is there.

17 I just want to highlight that and proffer that  
18 information. He is the president, treasurer, and founder of  
19 that organization. I will refer to it as NFF. He is highly  
20 involved in that obviously as the founder. And he mentors  
21 children as a part -- he mentors youth. He provides a whole  
22 bunch of other services as detailed in the exhibit that I've  
23 submitted.

24 I would just proffer that information relating to that  
25 charitable organization.

1           Your Honor, I think those are all the facts that I  
2           have to proffer, and I do have extensive argument. Thank  
3           you.

4           THE COURT: All right. Thank you.

5           All right. With that, we will proceed with argument.  
6           Mr. Toepfer.

7           MR. TOEPFER: Your Honor, as it relates to the  
8           danger the defendant presents to the community, the  
9           affidavit in support of the complaint goes into great detail  
10          about the defendant's involvement with the MRND party which  
11          was the driving force at the time of the genocide in Rwanda  
12          during the 1990's.

13          Specifically, he helped identify and persecute Tutsis  
14          at hospitals, universities, forcibly removing them in some  
15          instances.

16          He also guarded roadblocks with arms with a number of  
17          weapons, some more crude than others, and was identified by  
18          both survivors of the genocide as well as other perpetrators  
19          of the genocide as one of the most vicious MRND members at  
20          the university when all of this was happening.

21          Some of the details of the things in which he engaged  
22          more specifically were the murder of a woman and her  
23          14-year-old son, another instance where he was involved in  
24          helping to murder dozens of Tutsis before burying the bodies  
25          in a forest, another instance where he encouraged the rape



1 of several women, and then after the rape was finished,  
2 randomly selecting one of the women, only to murder her and  
3 then go about dismembering her following that.

4 It also details incidents where he murdered a tailor  
5 who was simply involved in making lab coats for doctors at  
6 the university, before murdering him in a particularly  
7 brutal fashion and also trying to dismember him as well.

8 Finally, there is a witness who has identified this  
9 defendant as being personally responsible for raping her  
10 during the genocide.

11 As I mentioned, a number of these witnesses have been  
12 previously called to testify in international courts and  
13 found to be credible.

14 There is also details about the number of statements  
15 he made in efforts to gain admission to the United States  
16 that are directly contradicted by all of these witnesses and  
17 detail the things that he did during the genocide.

18 Furthermore, he also testified falsely under oath in  
19 an effort to exonerate another associate who was engaged in  
20 similar behavior and faced similar charges in the District  
21 of Massachusetts.

22 Ultimately a jury found his testimony to be completely  
23 incredible, finding that associate guilty of the various  
24 crimes that I detailed earlier.

25 Now, I readily recognize that these violent offenses

1 occurred in Rwanda now 30-some years ago. But it would make  
2 sense that somebody who is trying to hide in plain sight  
3 would not be engaged in violent activity, but when suddenly  
4 faced with the prospect of being incarcerated by federal  
5 authorities and then facing extradition to Rwanda to face  
6 those charges related to the participation in the genocide,  
7 we can't predict what would happen in the future, especially  
8 now that he has nothing to lose.

9 More concerning is the risk of flight that this  
10 defendant presents.

11 I talked extensively already about the false  
12 statements that he made in an effort to obtain admission to  
13 the United States and in an effort to exonerate his prior  
14 associate.

15 The biggest problem this Court faces is that if you  
16 choose to release him, the guarantee of him showing up in  
17 Massachusetts is largely dependent on him giving you his  
18 word that he will do what he has promised to do.

19 But what we have here is a scenario where we have  
20 decades of deception committed by this defendant in an  
21 effort to avoid being held accountable for what he has done  
22 in the past.

23 And there is no reason to think that he would change  
24 that behavior when he gives you his word that he will show  
25 up when he has so much at stake.

1           He also has the financial resources to avoid being  
2 held accountable for what he's done.

3           So ultimately, Your Honor, the circumstances of this  
4 case show the defendant would be a danger to the community  
5 if allowed to remain in the community.

6           There is also a preponderance of the evidence here to  
7 show that he poses a severe risk of flight if he were  
8 released on bond.

9           So I would ask the Court to order that detention be  
10 continued while this matter is pending.

11           If, however, the Court disagrees and you choose  
12 ultimately to release him on bond, there are some things  
13 specifically I would ask for.

14           Specifically, rather than releasing him on an  
15 unsecured bond as recommended by pretrial services, the  
16 Court should order that it be a secured bond. He owns a  
17 house. He has a healthy income. Certainly has the  
18 resources to put up a guarantee that he would appear if he  
19 promises to do so.

20           I would also ask that you order that he have no  
21 contact with any of the victims or witnesses in this case,  
22 that he surrender his passport and any other passports that  
23 he might have, and that any travel be restricted to the  
24 Northern District of Ohio or the District of Massachusetts.

25           However, I don't think that's necessary because, as I

1 mentioned, the evidence in this case shows that he should be  
2 detained while this matter is pending.

3 THE COURT: Thank you, Mr. Toepfer.

4 Mr. Johnson.

5 MR. JOHNSON: Thank you, Your Honor.

6 Your Honor began the hearing by correctly identifying  
7 what is at issue in this hearing. The Court has to decide  
8 if there are a combination of conditions that would  
9 reasonably assure the appearance of Mr. Nshimiye as required  
10 in the District of Massachusetts. And it also has to decide  
11 if there is a combination of conditions that would  
12 reasonably assure the safety of the community.

13 And I believe when this Court looks at the  
14 overwhelming record of Mr. Nshimiye and his background and  
15 his past, that this Court can answer that easily in the  
16 affirmative, that there are a combination of conditions that  
17 can be imposed in this case.

18 There is not a presumption in this case. And so, in  
19 effect, what that means is that there is really a  
20 presumption in favor of release. Under the Bail Reform Act,  
21 the Court must start with the idea that there are a  
22 combination of conditions unless the government has  
23 satisfied its burden on those two factors.

24 And so there is in effect a presumption in favor of  
25 release and a presumption in favor of bond.

1           And I ask this Court to do exactly that, to grant Mr.  
2       Nshimiye a bond, so that way he can address these charges on  
3       his own, in the community, because there certainly are a  
4       combination of conditions that can reasonably assure his  
5       appearance as required in Massachusetts and the safety of  
6       the community.

7           Mr. Nshimiye has had an overwhelming history of good  
8       behavior in this country. The letters that were submitted  
9       on his behalf demonstrate that from a wide variety of  
10      sources.

11          Mr. Nshimiye's family has spoken on his behalf. Mr.  
12      Nshimiye's friends have spoken on his behalf. His neighbors  
13      have spoken on his behalf. Friends of family have spoken on  
14      his behalf. Coworkers have spoken on Mr. Nshimiye's behalf,  
15      speaking about the person that they know Mr. Nshimiye to be.

16          I think that one of the observations made by one of  
17      the individuals who wrote to Your Honor is important. They  
18      comment: It must be difficult for you to make decisions  
19      like this when you don't actually know the person. And then  
20      they went on to say that they would like the Court to  
21      understand that Eric is the kind of person around whom  
22      people rally.

23          And this Court has to consider the factors that are  
24      listed in 3142 that guides this Court. And I think that  
25      when you look at those factors, when you look at all of

1 those factors, they point to bond being granted in this  
2 case. They point to the availability of conditions.

3 The first factor is the nature and circumstances of  
4 the offense charged, including whether it is a crime of  
5 violence, it is not; a violation of Section 1591, it is not;  
6 a federal crime of terrorism, it is not; involves a minor, a  
7 controlled substance, firearm, or explosive or destructive  
8 device, it does not.

9 The weight of the evidence against the person. The  
10 weight of the evidence against the person, that factor goes  
11 towards the dangerousness and risk of nonappearance factors.  
12 It does not go towards the weight against the person as it  
13 relates to the evidence in the case. It's, what is the  
14 weight of the evidence relating to dangerousness and  
15 nonappearance?

16 And here, if there is any evidence of dangerousness or  
17 risk of nonappearance, it is minimal. It is small. And in  
18 the overwhelming history of Mr. Nshimiye's conduct while in  
19 the United States, it has been demonstrated repeatedly and  
20 it has been attested to repeatedly by people, as I said,  
21 from a wide variety of sources.

22 So the weight of the evidence weighs in his favor as  
23 it relates to dangerousness and appearing in court.

24 The next factor is his history and characteristics,  
25 including Mr. Nshimiye's character. And this Court has

1 ample evidence, extraordinary amount of evidence, as it  
2 relates to Mr. Nshimiye's character. The letters speak on  
3 that.

4 His physical and mental condition. I don't believe  
5 that weighs one way or the other.

6 I will note that while he has been in custody he was  
7 not receiving medication that he needed, although he did  
8 receive it finally this morning.

9 His family ties. His family ties weigh in favor of  
10 granting release. His family ties are extensive, both his  
11 immediate family with his wife who he has been married to  
12 for over two decades, and his four children who are  
13 supportive. We have letters from them.

14 His family ties weigh in favor of release.

15 His employment. As I described during my proffer, he  
16 has been employed at one position since the year 2000. He's  
17 coming up on his 24-year anniversary. That is rare in these  
18 times, in these days, for a person to have one job and not  
19 be moving around from place to place, because he has worked  
20 himself up. He has worked himself up and been promoted at  
21 one job, started in June of 2000, and he's still there now.  
22 And they didn't even -- from his understanding, he's still  
23 employed by them even though he's been in custody for over a  
24 week.

25 His employment weighs in favor of release.

1 Financial resources. It weighs in favor of release.

2 His length of residence in the community. Again,  
3 weighs in favor of release. Mr. Nshimiye has been a  
4 resident of Ohio since 1995. He has been a resident of  
5 Northeast Ohio since 2000. He hasn't lived anywhere else.

6 His community ties are extensive. They're almost as  
7 much community -- they're more community ties than I have  
8 ever seen. The community ties range from -- run the gamut  
9 from his dentist, who has submitted letters on his behalf,  
10 to people who went to school with his children who have  
11 submitted letters on his behalf, to people who have  
12 participated in his nonprofit organization that he started,  
13 and that whose kids went to and were mentored by Mr.  
14 Nshimiye, went to the nonprofit organization that he  
15 started.

16 His community ties are extensive. And in fact he is a  
17 contributor to the community. Not only does he have ties to  
18 the community, but he builds the community.

19 His history relating to drug and alcohol abuse is  
20 zero. None. Weighs in favor of release.

21 His criminal history is none. Zero. That weighs in  
22 favor of release.

23 His record concerning appearance at court. He has no  
24 record of appearing in court because he's never needed to  
25 appear in court. That weighs in favor of release.



1           He was not on supervision at the time. That weighs in  
2 favor of release.

3           And last -- and there was -- I will come back to two  
4 other factors.

5           But the nature and circumstances -- the nature and  
6 seriousness of danger to people in the community if he were  
7 to be released. I submit that there is no danger to members  
8 of the community if Mr. Nshimiye were to be released.

9           Mr. Nshimiye is an upstanding member of the community  
10 who has had zero acts of violence, who has had zero evidence  
11 of even losing his temper in public in the last -- that  
12 anybody can ever recollect -- recall. That weighs in favor  
13 of his release.

14           I would like to highlight a few of the points that  
15 were submitted in the letters that were contained in the  
16 exhibit.

17           Well, let me come back to that.

18           As it relates to the factor of his conduct, and as it  
19 relates to the nature and circumstances of the offense, the  
20 underlying allegations about what somebody did in Rwanda in  
21 1994 are horrendous. They're violent. Nobody is going to  
22 dispute that.

23           The issue in this case, the issue in this hearing, is  
24 not whether Mr. Nshimiye did those things. The issue is  
25 whether bond can be granted, and I submit that it can.

1 But as it relates to those underlying allegations, Mr.  
2 Nshimiye is presumed innocent. And not only is he presumed  
3 innocent, but I'm here to tell you that he maintains his  
4 innocence vehemently.

5 His family had submitted a statement that was  
6 submitted in the exhibits, and it's not only on the family's  
7 behalf but it's also on Mr. Nshimiye's behalf. And he  
8 vehemently denies all allegations brought against him and he  
9 asserts his complete innocence.

10 They went on to explain that he is a beloved and  
11 active figure in the community, a devoted husband and  
12 father, a man of deep faith, as evident in every aspect of  
13 his life. We attest to his moral integrity and dismiss the  
14 charges against him as incompatible with his character and  
15 beliefs as those who know him would agree.

16 Mr. Nshimiye is presumed innocent of those very  
17 violent and horrific acts that allegedly occurred in 1994,  
18 that somebody may have committed in 1984 -- 1994.

19 And that is the only aspect, that is the only  
20 allegation of any type of wrongdoing in Mr. Nshimiye's  
21 history.

22 And since being in the United States, there has been  
23 not a single allegation of anything violent or losing his  
24 temper.

25 Now, getting back to some of the highlights of some

1 the things that some of the individuals have talked about.

2 One of the letters talked about how he is one of the  
3 most upstanding, most respectful and respected men that we  
4 know. I have never known him to be a violent person or even  
5 lose his temper one time in an uncontrolled manner.

6 There was -- I think, as I reviewed the letters, there  
7 were two people who both said the same thing, but they  
8 were -- they can't even recall a negative comment of anybody  
9 making about Mr. Nshimiye. I think one of those persons was  
10 a coworker. And then there was another person who was a  
11 community member.

12 I mean, how many -- think about that. That is not a  
13 statement that very many of us can make about a lot of  
14 people, if any. They can't even recall somebody saying  
15 something negative about Mr. Nshimiye, let alone them having  
16 any experience with anything negative about Mr. Nshimiye.

17 His coworker said it would have been surprising to  
18 even hear someone claim unfair treatment or comments by  
19 Eric, let alone violence.

20 His elderly neighbors who live next to him, he has  
21 helped them out. And not just the neighbors who live next  
22 to him, but neighbors who live all over the street. The  
23 people who see him every day have attested to his character,  
24 have attested to his behavior, who have known him for years,  
25 since 2003 and beyond.

1           In fact, even people who fled Rwanda in 1994 as a  
2       result of the genocide are aware of the allegations against  
3       Mr. Nshimiye, and they support Mr. Nshimiye.

4           Now, what the government has argued is the conduct in  
5       1994 and this -- and alleged falsities about that conduct.

6           But again, he is presumed innocent of that. And I ask  
7       the Court to remember that he is presumed innocent of that.

8           And in addition to that, I think -- you might wonder,  
9       what does a letter from a dentist have anything to do about  
10      granting bond in a case?

11          And I think it shows the inner workings of Mr.  
12      Nshimiye and his true character because in that letter, what  
13      it talked about was how he put the dental needs of his wife  
14      and children above his own. He elected to forgo his own  
15      dental needs at a time to take care of his wife and kids'  
16      needs when they had to choose between the two.

17          And I submit to this Court what that shows is that Mr.  
18      Nshimiye is not somebody who is hiding, Mr. Nshimiye is not  
19      somebody who is being somebody that he is not, who is acting  
20      in the community in all of these ways, no, because when  
21      you're in the dentist chair, you can easily say, you know  
22      what, let's schedule me first. He didn't do that.

23          That's what I'm saying. It's a little thing. It's a  
24      little glimpse into his life. It's a little glimpse into  
25      who Mr. Nshimiye is.

1           And so when you wonder, and sit there and you think,  
2           what does a dentist have to do with it? That little glimpse  
3           just shows you who he is because he is sitting there, he  
4           could have easily decided to put his needs above others, and  
5           he didn't. And that shows you that he's not acting. It  
6           shows you who he is.

7           We have people who have a Doctorate in  
8           Humanitarianism, who have studied international studies in  
9           human rights who support Mr. Nshimiye.

10          And as I said earlier, he is an upstanding member of  
11          the Rwanda American community throughout Ohio, from Dayton,  
12          Columbus. And as I said earlier, we have people from all  
13          parts of the United States who are in this very packed  
14          courtroom and people out in the hall to support him.

15          So ultimately, Your Honor, when we come down to the  
16          issue of is Mr. Nshimiye a risk of not appearing in court, I  
17          submit absolutely not.

18          Mr. Nshimiye is not running from the courthouse. He  
19          is running to the courthouse to clear his name. He wants to  
20          appear in court in Massachusetts to clear his name because  
21          these are horrendous allegations, very violent allegations,  
22          and they are a blemish on the person who Mr. Nshimiye has  
23          been since 19 -- for his whole live, frankly, but even the  
24          government can say since 1995, with the exception of their  
25          allegation about lying about 1994.

1 But the point is, he wants to clear his name. He is  
2 looking forward to his day in court. The government is  
3 going to get their day in court in Massachusetts, and Mr.  
4 Nshimiye at the same time is also going to get his day in  
5 court. And he looks forward to the day that he gets to  
6 clear his name.

7 As the family letters ended: His good name will be  
8 cleared and his integrity restored.

9 And so that is why he is not a risk of nonappearance.  
10 This Court, I ask, I submit, cannot make the finding by a  
11 preponderance of the evidence that he is a risk of  
12 nonappearance.

13 And if the Court has a concern about that, there are  
14 certainly conditions that the Court can impose to overcome  
15 any of those concerns.

16 The pretrial services report has not recommended  
17 location monitoring or anything of that sort to see where he  
18 is. I don't think that it's necessary, frankly.

19 And I don't know where Your Honor is at, where your  
20 thought process is, but if for some reason you felt that  
21 there is a concern that he might go somewhere else, then  
22 that is a condition that could be imposed, so that way we  
23 can ensure that he is in the Northern District of Ohio as he  
24 is required to unless he gets permission to go elsewhere and  
25 things of that sort.

1 But there are conditions that can be imposed to  
2 address any concerns about risk of nonappearance in court,  
3 but there should be none, is the bottom line, in the way  
4 that I see it.

5 As it relates to the safety of other persons and the  
6 community, in short, this Court, I submit, cannot find by  
7 clear and convincing evidence, a heightened burden, a  
8 heightened standard, this Court cannot find by clearing and  
9 convincing evidence that Mr. Nshimiye is a danger to the  
10 community.

11 Mr. Nshimiye is not a danger to the community. He  
12 enhances the community. He makes the community more safe by  
13 his role that he does in his mentorship program, by his  
14 nonprofit organization, by his work, by his family, by  
15 supporting his kids, by supporting his wife.

16 By everybody's -- by the accounts of everybody that  
17 we've heard from, he is not a danger to the community. He  
18 makes the community safer by his role, by being out in it.

19 So by clear and convincing evidence, can this Court  
20 make that finding? I submit the answer is a resounding no.

21 And again, any concern that the Court has about danger  
22 to the community, which, again, I emphasize should be zero,  
23 but if there is one, a combination of conditions can be  
24 imposed.

25 So let me talk about some conditions.

1           The pretrial services report discusses that he -- that  
2           they -- they do recommend bond, for the record. They  
3           recommend that bond be imposed. They have him at a score of  
4           1, which is the lowest that it can be. They recommend an  
5           unsecured bond.

6           Now, the government has suggested a secured bond. I  
7           would ask for an unsecured bond.

8           Mr. Nshimiye understands that if he were to fail to  
9           appear, or anything of that sort, that the unsecured bond  
10          would be forfeited and he would owe that amount of money,  
11          which would be a significant burden on his family.

12          So I believe an unsecured bond is a condition that is  
13          enough to address any concerns that the Court has. I don't  
14          believe that a secured bond is necessary.

15          The pretrial services report also recommends that he  
16          has no contact with victims or witnesses. Mr. Nshimiye  
17          would have no problem with that.

18          It recommends that he surrender his passport and not  
19          obtain any travel documents. We have no problem with that.  
20          We would have no objection to that.

21          His travel would be restricted to the Northern  
22          District of Ohio. We would have no problem with that, with  
23          the exception of, of course, the standard condition -- the  
24          standard language of that condition is that he can obtain  
25          permission to leave the Northern District of Ohio if he



1 needs it.

2 And we would suggest that he go through that normal  
3 process, if he needs to leave the Northern District of Ohio,  
4 he seek permission from the Court, which of course would be  
5 the District of Massachusetts, to do so.

6 But he asks for that condition to be imposed, and he  
7 would abide by it and comply with it.

8 I believe that the conditions that are recommend in  
9 the pretrial services report are sufficient.

10 If the Court has additional conditions that it  
11 believes that might be warranted, as I mentioned earlier,  
12 third-party custodians, they are available.

13 Take a look. I'm sure any of them would be willing  
14 to. I've suggested two. He has his nephew who has been  
15 coordinating with the family, and he has his wife who he  
16 lives with.

17 If the Court is concerned about location, there is a  
18 location monitoring condition that the Court could impose.  
19 I, again, I don't believe that's necessary, but I'm just  
20 making sure that the Court -- to emphasize that before the  
21 Court resorts to detaining Mr. Nshimiye, all of those  
22 options are exhausted because that is what the statute  
23 requires.

24 And I think at the end of the day when the Court  
25 considers all of those options that are available to it and

1 the conditions that might be imposed, Mr. Nshimiye will  
2 abide by any condition that this Court imposes because he  
3 will be in Massachusetts. He will get himself to  
4 Massachusetts. He will appear in court as required. And he  
5 is not a danger to anybody.

6 So I ask that you grant him bond.

7 Thank you, Your Honor.

8 THE COURT: Thank you.

9 All right. The issue before the Court today is  
10 whether there are conditions that will reasonably assure the  
11 safety of the persons in the community and the appearance of  
12 the defendant.

13 The Court must look at the 3142(g) factors to  
14 determine whether or not there are conditions today.

15 The first of those is the nature and circumstances of  
16 the offense. The Court notes that Mr. Johnson went over  
17 these factors in his argument and talked about the nature  
18 and circumstances of the offense.

19 And when he talked about the nature and circumstances  
20 of the offense, he talked about how the offenses that Mr.  
21 Nshimiye is charged with are not certain offenses that he  
22 named. And these offenses appear to be offenses where there  
23 are presumptions of detention, which the Court notes and the  
24 government agrees that there is not a presumption of  
25 detention in this case for the charges that he is charged

1 with, the charges of perjury, obstruction of justice, and  
2 falsifying, concealing, and covering up a material fact by  
3 trick, scheme, or device.

4 However, that is not the only thing that the Court  
5 looks at when it looks at the nature and circumstances of  
6 the offense. The Court does not just look at whether or not  
7 it has a presumption.

8 If that were the end of the inquiry, then there would  
9 never be a need for a detention hearing when there is not a  
10 presumption of detention.

11 Rather, the Court has to actually look at the nature  
12 and circumstances of the offense.

13 Looking at that here, these offenses don't have a  
14 presumption of detention. However, the Court has to look at  
15 how they were committed.

16 And here, when we look at how they are alleged to have  
17 been committed, these offenses are alleged to have been  
18 committed for the purpose of being able to illegally enter  
19 the United States, to illegally falsify documents regarding  
20 where one came from, asylum paperwork, and all of those  
21 types of things.

22 And when the Court looks at why a person would do  
23 something like that, if it were to happen, the purpose of  
24 that would be to hide something and to enter the United  
25 States illegally.

1           And someone who is willing to do that and would do  
2           that has a reason they want to be here, something they want  
3           to leave behind. They have a motive to do it.

4           So when the Court looks at the nature and  
5           circumstances of the offense here, the Court finds that this  
6           is not the typical case where the Court sees someone charged  
7           with perjury or obstruction of justice or falsifying or a  
8           concealing a record. This is a different type of case.  
9           There is a different motive.

10          And when the Court looks at the nature and the  
11          circumstances surrounding these allegations, the Court does  
12          find that that factor weighs in favor of detention.

13          Next, the Court will look at the history and  
14          characteristics of the defendant.

15          Looking at the history and characteristics of the  
16          defendant here is tricky. What the Court sees is  
17          allegations relating to two totally separate men.

18          When you look at the indictment and the complaint, you  
19          see one thing. But the outpouring of the 80 or 70 -- 102  
20          pages of documents is what I received in support of him.  
21          And when I look at that outpouring and when I look at the  
22          outpouring that I see in this courtroom today, it tells a  
23          much different story than what I see there.

24          Looking at the different factors regarding his history  
25          and characteristics, the Court agrees that his family ties,

1 his employment history, the length of his time at his  
2 residence and in the community, his ties to the community,  
3 his lack of criminal history, and his no records of  
4 nonappearance, certainly weigh in favor of release.

5 When the Court looks at his character and his past  
6 conduct, it's hard for the Court to say. The Court can't  
7 put that in either box because on one hand I see someone who  
8 has the character that you all represent and that you all  
9 share with me today and that you put in all of these  
10 letters.

11 On the other hand, there is also the allegations that  
12 sit in front of the Court that have not been proven true at  
13 this point but are allegations nonetheless.

14 And so when the Court looks at those and considers  
15 them as a whole, the history and characteristics don't point  
16 the Court in either direction. The history and  
17 characteristics seem to be equal on both sides, equal on the  
18 side of release and equal on the side of detention based on  
19 what the Court sees in front of it.

20 Next, going to the nature and seriousness of the  
21 danger that would be posed to any person or the community if  
22 the defendant is released.

23 The Court does note the government's argument  
24 regarding the defendant. And as everyone I think will  
25 agree, the allegations that are in the complaint and in the

1 indictment are troubling.

2 But the Court does note that the man that sits in  
3 front of the Court today is innocent, innocent until proven  
4 guilty, and those things that are sitting in the indictment  
5 and also in the complaint are simply allegations.

6 Additionally, they are allegations that at this point  
7 are stale. They're allegations of things that happened in  
8 the '90s. And the record in front of the Court is that he  
9 has done none of those things in the United States.

10 And it's important to note the burdens that are in  
11 front of the Court today.

12 Regarding whether or not the Court can assure by  
13 conditions that he is -- the safety of other persons in the  
14 community is a clear and convincing standard, which is  
15 higher than that of the standard for his nonappearance.

16 So looking at what is in front of the Court, the Court  
17 cannot say by clear and convincing evidence that there is no  
18 condition that will reasonably assure the safety of other  
19 persons in the community.

20 And so therefore looking at the nature and seriousness  
21 of the danger posed to the community if the defendant is  
22 released, the Court finds that that factor weighs in favor  
23 of release.

24 Next, the Court has to look at the weight of the  
25 evidence against the defendant. And it's here that the

1 Court will also look at the risk of flight that is posed  
2 here.

3 It's important to note that in getting to this  
4 hearing, because this was not -- these are not offenses that  
5 allow for a detention hearing, the government had to make a  
6 showing regarding a risk of flight.

7 And it's important to note that a risk of flight is  
8 different than the standard that is in front of the Court  
9 now as to whether or not there are conditions that will  
10 reasonably assure his appearance.

11 Reasonably assure his appearance is whether or not  
12 he'll come to court as instructed versus risk of flight is  
13 whether or not he will actually flee the jurisdiction.

14 In looking at that, the Court has gone through all of  
15 the letters, listened to everything that's heard, but the  
16 one thing they do not address is the risk of nonappearance  
17 or the risk of flight, which is the Court's main concern in  
18 this case.

19 They do not address that. They don't address whether  
20 or not that should be something the Court is concerned  
21 about, how the Court should deal with that.

22 The Court notes that in the government's proffer it  
23 offered that if Mr. Nshimiye were convicted, he would face  
24 removal to Rwanda. And once there, he would face charges on  
25 the conduct that is described in the indictment and in the

1 complaint.

2 That is a serious consequence. And that serious  
3 consequence gives him a motive and a reason to flee. While  
4 he may have a motive and a reason to also clear his good  
5 name, that extreme consequence is the thing that, if these  
6 allegations are taken as true, he's been running from his  
7 entire life.

8 And if he has run from that thing his entire life, it  
9 is hard for the Court to say that he will not continue  
10 running from it, if given the opportunity.

11 While the Court understands that everything in the  
12 indictment and in the complaint are allegations, the Court  
13 also notes that the government proffered that at the time  
14 that he took the stand to testify on behalf of his friend,  
15 he admitted to some false statements.

16 These false statements were about where he was born,  
17 his father's death, and where he went to school. These  
18 seemingly minor things disturb the Court as to why someone  
19 would lie about things that are seemingly minor but also  
20 things that you would never forget.

21 And it leads to a conclusion that you lied about them  
22 to hide something. And if he would lie about these things  
23 to hide them to get here, it is hard for the Court to say  
24 that he would not do similar acts of deception and lying and  
25 fleeing to keep himself from going back to the place that he



1 worked hard to run away from.

2 Here, based on that, the Court finds that the nature  
3 of the evidence regarding a -- regarding nonappearance, or  
4 regarding a risk of flight particularly, is high. And  
5 therefore the Court finds that that factor weighs in favor  
6 of detention.

7 Now, this does not end the inquiry because the  
8 Court -- it's not simply a question of whether or not he is  
9 a risk of flight or whether or not he is a risk of  
10 nonappearance, but whether or not the government has  
11 demonstrated by a preponderance of the evidence that no  
12 conditions will reasonably assure his appearance. And so  
13 that's where the Court must now look at whether or not there  
14 are such conditions.

15 And the Court has looked over the conditions that have  
16 been recommended by pretrial services.

17 Reporting for supervision certainly helps.

18 Surrendering his passport certainly helps.

19 Not being able to obtain a passport certainly helps.

20 These are all things that help with travel.

21 And travel restrictions help.

22 But the fact of the matter -- and then also, they  
23 don't put it on here, but the Court has considered, could it  
24 give GPS monitoring as a condition and would that then  
25 show -- would that then take away the risk of nonappearance

1 or the risk of flight?

2 But the fact of the matter is that if the Court were  
3 to put him on an ankle monitor, all that does is tell the  
4 Court and the probation officer where he is. It does not  
5 stop him from fleeing.

6 And particularly in a case like this where the case is  
7 not here in the Northern District of Ohio but the case is in  
8 the District of Massachusetts, he has to travel to  
9 Massachusetts.

10 So every time he's traveling there, that presents a  
11 risk that instead of going to Massachusetts he could flee to  
12 somewhere else. And by the time anyone would notice, he  
13 would be gone.

14 So while a GPS monitor would help, it does not solve  
15 the problem. It doesn't take away -- it doesn't reasonably  
16 assure his appearance.

17 Based on that, the Court finds that the government has  
18 met its burden of proving by a preponderance of the evidence  
19 that no condition will reasonably assure the defendant's  
20 appearance. And therefore he will be remanded to the  
21 custody of the United States marshals pending further  
22 proceedings in this matter.

23 Is there anything further on behalf of the government?

24 MR. TOEPFER: No, Your Honor.

25 THE COURT: Anything further on behalf of the

1 defendant?

2 MR. JOHNSON: Nothing other than note our  
3 objection.

4 THE COURT: All right. Thank you. It is noted.  
5 We are adjourned.

6 THE DEPUTY CLERK: All rise.

7 (Proceedings concluded at 4:08 p.m.)

8

9 C E R T I F I C A T E

10

11 I certify that the forgoing is a correct  
12 transcript from the record of proceedings in the  
13 above-entitled matter.

14

15 S/Caroline Mahnke 4/27/2024

16 Caroline Mahnke, RMR, CRR, CRC Date

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